

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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STATE OF NEW YORK,	:
	:
Plaintiff,	:
	:
-v-	:
	:
CHAD F. WOLF, <i>in his official capacity as Acting</i>	:
<i>Secretary of Homeland Security</i> , et al.,	:
	:
Defendants.	:
-----X	
	:
R. L'HEUREUX LEWIS-MCCOY et al., <i>on behalf of</i>	:
<i>themselves and all similarly situated individuals</i> ,	:
	:
Plaintiffs,	:
	:
-v-	:
	:
CHAD WOLF, <i>in his official capacity as Acting</i>	:
<i>Secretary of Homeland Security</i> , et al.,	:
	:
Defendants.	:
-----X	

20-CV-1127 (JMF)

20-CV-1142 (JMF)

ORDER

JESSE M. FURMAN, United States District Judge:

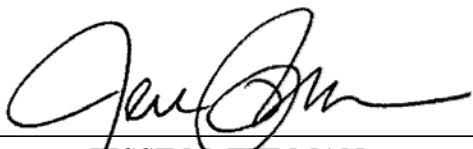
On June 19, 2020, Defendants filed a motion for summary judgment in both of these cases. *See* 20-CV-1127, ECF No. 67; 20-CV-1142, ECF No. 73. In support of their motion, Defendants submitted three declarations that were not included in the revised Administrative Record (“AR”) filed on June 17, 2020. *See* 20-CV-1127, ECF Nos. 68-1, 68-2, 68-3; 20-CV-1142, ECF Nos. 74-1, 74-2, 74-3. Plaintiffs now move to exclude these materials from consideration; in the alternative, Plaintiffs seek leave to conduct extra-record discovery and

request that the Court reconsider its decision on Plaintiffs' prior motion to complete the AR in light of Defendants' new disclosures. *See* 20-CV-1127, ECF No. 70; 20-CV-1142, ECF No. 76.

At first blush, Plaintiffs make a strong case for disregarding the new declarations — an argument that they can expand upon in their opposition to the motion in the normal course. Alternatively, to the extent that the Court decides it may consider the declarations, and Plaintiffs believe that there are facts essential to their opposition that are not available to them, they may file an affidavit or declaration seeking extra-record discovery or an order compelling Defendants to supplement the Administrative Record pursuant to Rule 56(d) of the Federal Rules of Civil Procedure. The net result is that the Court may not need to resolve the propriety of Defendants' declarations at this time. That said, Defendants shall submit any response to Plaintiff's letter-motion by **June 24, 2020**, at **noon**. (No reply may be filed absent leave of Court.) Upon review of Defendants' letter, the Court will issue an order if it believes that further action is required or appropriate at this time; in the absence of any such order, Plaintiffs should address these issues in their opposition to the motion for summary judgment.

SO ORDERED.

Dated: June 22, 2020
New York, New York



JESSE M. FURMAN
United States District Judge